



## Special Advisory on Policies Regarding Conflict of Interest, Abandoned Auctions & Disqualifications Due to Non-Payment

*Date Issued: July 4, 2008*

This special advisory is issued in response to inquiries about 3 processes regarding the ongoing .ASIA Sunrise and Landrush Auctions:

1. Conflict of Interest Policies with auction services provider
2. Abandoned Auctions and re-auctioning processes
3. Disqualification of applicant for non-payment of winning auction price

### 1. Policies Addressing Conflict of Interest with Auction Services Provider

DotAsia is committed to providing a platform and process for applicants to compete for domain names of interest in the .ASIA Sunrise and Landrush phases. DotAsia is also committed to Sunrise and Landrush processes that provides a balanced approach to protect the rights of others. The .ASIA Sunrise Policies (<http://www.registry.asia/policies/DotAsia-Sunrise-Policies--COMPLETE-2007-08-10.pdf>) were developed in an open and public process involving multiple publicly posted drafts and proactive solicitation of feedback from the community over an 8-month period between January and August of 2007. It is important to note that the .ASIA Sunrise process was designed to allow any trademark owner the right to participate in the protection of their brand, even if they are affiliated to DotAsia or its providers. Because a first-come-first-served process was not used, there is no reason to believe that affiliation with the registry or its providers would favour any applicant in the process. DotAsia believes that allowing all prior rights owners to participate in the Sunrise is appropriate and consistent with the principles and policies of the .ASIA's commitment towards a stable and orderly introduction of the .ASIA TLD into the social and technical fabric of the Internet.

The .ASIA Sunrise and Landrush auctions were designed to facilitate a calm and comfortable process for applicants to compete for a particular domain name. An English style auction is used such that the incremental leading bid price can be observed by all parties. Auctions are automatically extended for a substantial amount of time (24 hours) if a change of lead occurred in the final 24 hours of an auction. Automated proxy bidding is also provided to ensure that bids are placed in predetermined intervals (for more details regarding the bidding process see: <http://www.dotasia.pool.com/faq.aspx>). The automatic extension of 24 hours means that trailing bidders, after a change of lead, will have ample time to react and to increase their bid. Therefore, even for an affiliated party, the system itself provides that no advantage or favour is gained by any party because the only way to win an auction is to place a bid higher than all other bidders.

On top of the process design, DotAsia has also shown its commitment towards ensuring that conflict of interest issues are handled comprehensively. In our public RFP (Request For Proposal) issued on April 28, 2007 (<http://www.registry.asia/rfp/DotAsia-AuctionPartnerRFP--2007-04-28.pdf>), we have specifically requested all respondents to address the issue of conflict of interest:

## 7 Conflict of Interest and Other Declarations

Please indicate whether your company or related parent, subsidiary or affiliate:

- Operate a domain registrar (please specify whether it is ICANN accredited or other);
- Provide auction services to other domain registries;
- Any other activity that may be viewed as potentially being a conflict of interest
- Has any ownership affiliations with companies that provide the above services

Please also indicate how you propose to act to mitigate the concerns and whether you have any prior experience to demonstrate your ability to operate under a conflict.

The following is an extract from the response from Pool.com:

*The Momentous group of companies includes domain registrars offering services for a broad range of TLDs. Pool.com does not currently provide auction support to any other registries. Pool.com operates as an independent company under the Momentous.ca umbrella and while Momentous.ca is also parent to a number of registrars, we can guarantee that all auction information is held in complete confidence and that no Momentous.ca registrar has undue advantage in auctions through access to privileged information.*

*Pool.com has operated the deleting domains auctions without any conflict with any of the Momentous.ca organizations. We have a demonstrated history of being able to co-exist without creating an advantage achieved through corporate affiliation or co-location.*

Furthermore, DotAsia understands that Momentous consists of a diverse group of companies, including Pool.com, and that the companies within that group intends to participate in the .ASIA Pioneer Domains Program and Sunrise process in order to protect and develop their trademarked brands. Correspondingly to reflect our understanding and to address potential conflict of interest issues, effective as of July 25, 2007 (the day of the appointment of Pool.com as the auction services provider for the .ASIA Sunrise and Landrush Auctions Services Provider – <http://www.registry.asia/pressreleases/DotAsia-PR-2007-07-25-ENG.pdf>), the following understanding has been established between DotAsia and Pool.com:

*WHEREAS Pool.com Inc. ("Pool") is the auction service provider to the DotAsia Organisation Limited ("DotAsia") pursuant to the .ASIA Auction Agreement between Pool and DotAsia (the "Auction Services Agreement");*

*AND WHEREAS DotAsia and Pool wish to ensure the integrity of the provision of auction services such that no bidder has an unfair advantage over any other bidder;*

*AND WHEREAS Pool and/or its parent, affiliated or related companies have registrar and other domain name related businesses;*

*NOW THEREFORE DotAsia and Pool agree to adopt the following conflict of interest policy:*

### *1. Confidentiality and Data Sharing*

*In this policy, "auction participant data" includes, but is not limited to:*

- Bidder identity
- Registrant
- Proxy bid amounts

*It is hereby confirmed that all auction participant data is considered Confidential Information by Pool and DotAsia for the purposes of Section 5 of the Auction Services Agreement. Accordingly, Pool shall not directly or indirectly disclose, allow access to, transmit or transfer any Confidential Information to any third party except with the written consent of DotAsia.*

*Pool further acknowledges its obligation pursuant to the Auction Services Agreement to only use the auction participant data in connection with the performance of its obligations under the Auction Services Agreement, and not for any other reason.*

## *2. Definition of “Non-Arms Length Relationship”*

*The following auction participants will be deemed to have a “Non-Arms Length Relationship” with Pool or DotAsia for the purposes of this policy:*

- Suppliers of Pool and/or DotAsia (or their respective parent, subsidiary, affiliated, or related companies);*
- Any customer of Pool or DotAsia in respect of which Pool or DotAsia, respectively, have an agency or similar relationship;*
- Any person under common ownership and/or control with Pool or DotAsia, and their respective directors, officers, shareholders, agents and employees; and*
- Any person that has access to auction participant data that is not otherwise available to the public (recognizing that auction participant data may only be provided to employees and consultants of DotAsia or Pool who (A) have a need to know the information for the purpose of performing obligations under the Auction Services Agreement; and (B) have an obligation to keep such auction participant data confidential and have been informed of Pool and DotAsia’s obligations under the Auction Services Agreement).*

*Both Pool and DotAsia are responsible for:*

- identifying persons with whom there is a Non-Arms Length Relationship;*
- establishing appropriate internal procedures to safeguard the confidentiality of auction participant data from persons having a Non-Arms Length Relationship, as required by Section 1 above; and*
- ensuring compliance by persons having a Non-Arms Length Relationship with the protocols in Section 3.*

*DotAsia understands that, as an additional safeguard, employees of Pool and its affiliated registrar businesses are, subject to limited exceptions, not permitted to register domain names in their personal capacity.*

## *3. Protocol for Auction Participation by a Person Having a “Non-Arms Length Relationship”*

*Any person having a “Non-Arms Length Relationship” that wishes to participate in a DotAsia Auction must:*

- a) determine its maximum bid in advance of the auction start date;*
- b) file its maximum bid with a duly qualified third party solicitor or notary who, if requested, will provide an affidavit attesting to the maximum bid value placed on deposit;*
- c) place a single maximum bid on the first day of the auction; and*

d) *place no additional bids for that auction.*

*Pool and DotAsia agree that this policy applies to all DotAsia auction participants including bidders, registrars, registrants or other agents assigned by any of the foregoing to act on their behalf in a DotAsia auction.*

As of this date, there is no indication that the above understanding has been breached. The design of the policy and the conflict of interest policies ensure that an equitable platform and process is provided to all interested and qualified parties participating in the .ASIA Sunrise and Landrush auctions. All Sunrise applications are further verified by highly qualified professionals at our verification provider (Deloitte and AGIP), for their accuracy to even better ensure the integrity of the process.

## **2. Process for Abandoned Auctions**

DotAsia has recognized that some of the .ASIA Sunrise and Landrush Auctions have closed without any bids (i.e. none of the applicants placed a bid in during the original allotted 7-day time period – “Abandoned Auction”). In an earlier Special Advisory issued on March 24, 2008 (<http://www.registry.asia/policies/DotAsia-AdvisoryOnAuctionScheduling--2008-03-24.pdf>), DotAsia has provided the framework for handling Abandoned and Invalidated Auctions:

*In the event of an Abandoned Auction or an Invalidated Auction, DotAsia reserves the right to the following lines of actions:*

- *Schedule for Re-Auction*
- *Reserve the domain until further action is determined*
- *Release the domain for general registration*

*In the event of an Abandoned Auction, DotAsia will proactively reach out to participants to understand the reason for the inactivity and determine the appropriate action. In the case of a Re-Auction, whether by way of an Abandoned Auction or due to the invalidation of an auction as a result of tampering, depending on the nature of the applications and the domain, DotAsia reserves the right to invite or not invite one or more of the original applicants as well as additional qualified bidders or the public to the Re-Auction.*

*For Abandoned Auctions, the registry will consider passing the domain to a subsequent phase (i.e. from SR2a to SR2b, or from SR2b to SR2c, or from SR2c to SR3 or from SR3 to Landrush) in the startup process, inviting qualified applicants from the subsequent phase to the auction. Once a domain is allocated, the registry will send out email notifications to the registrants indicating the status of their application.*

This Special Advisory confirms the following general process for handling Abandoned Auctions:

1. Systematic Manual Outreach to Participants
  - a. DotAsia will manually reach out to all original participants (and their sponsoring registrars) to seek their interest of participating in a re-auction
  - b. Outreach will be conducted via email
  - c. A reasonable time period will be provided for participants to respond

## 2. Determination of Scope of Re-Auction Participants

- a. In the case where at least one original participant indicates its interest to participate in a re-auction, a re-auction with the original participants will be conducted
- b. In the case where none of the original participants respond or indicate their interest to participate in a re-auction, qualified applicants from a subsequent phase will be invited to a re-auction:
  - i. If the original auction was conducted between qualified SR2a applicants, qualified SR2b applicants will be invited along with the original auction participants to the re-auction (if there are no qualified SR2b applicants, additional participants will be invited as per ii. below)
  - ii. If the original auction was conducted between qualified SR2b applicants, qualified SR2c applicants will be invited along with the original auction participants to the re-auction (if there are no qualified SR2b applicants, additional participants will be invited as per iii. below)
  - iii. If the original auction was conducted between qualified SR2c applicants, qualified SR3 applicants will be invited along with the original auction participants to the re-auction (if there are no qualified SR2b applicants, additional participants will be invited as per iv. below)
  - iv. If the original auction was conducted between qualified SR3 applicants, Landrush applicants will be invited along with the original auction participants to the re-auction (if there are Landrush applicants, additional participants will be invited as per v. below)
  - v. If the original auction was conducted between Landrush applicants, the public will be invited along with the original auction participants to the re-auction

## 3. Scheduling and conducting Re-Auction

- a. Upon the determination of the scope of the participants for a re-auction (as described in 2. above), a re-auction will be scheduled
- b. All participants for a re-auction will be notified via email at least 10 days in advance of the opening of a re-auction
- c. In the case where the public is invited to a re-auction, public statements will be issued by DotAsia in advance of the re-auction
- d. Essentially the same online auction process will be used for re-auctions (except where the public is invited to a re-auction)

The process is consistent with the principles of the .ASIA Sunrise and Landrush processes.

## 3. Disqualifications Due to Non-Payment

All bids placed are legally binding agreements to purchase a domain for the agreed upon price of up to your maximum bid. Bids may not be retracted or cancelled. DotAsia recommends all participants to take your time when placing a bid. The auction process was designed such that placing bids at the end of an auction does not create any advantage. Therefore, DotAsia recommends that participants place their bids early to allow for more time for considerations.

Applicants who refuse to pay or deliberately delaying to pay for a winning auction price may be disqualified from further participation in the .ASIA Sunrise and Landrush auctions to protect the integrity of the process. For further details, see the terms and conditions of participation in an auction conducted by our Auction Service Provider: <http://dotasia.pool.com/terms.aspx>.